IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1799 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K.K. WAGHELA

Versus

STATE OF GUJARAT

Appearance:

NOTICE SERVED for Petitioner

MR DP JOSHI, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. The petitioner was employed as Peon through the Employment Exchange. The petitioner joined service on 21/9/1978. He has placed on record the appointment order at Annexure-A, which indicates that the appointment was

not permanent. However, since after the appointment the petitioner discharged the duties as a Peon and was sought to be terminated on the alleged ground that the petitioner is declared surplus though many juniors to him were continued in service. He has stated on oath that he worked for about 8 years.

2. The petitioner has pointed out in para. 3 of the petition that he was temporary and was posted in the office of the Executive Engineer, Design and Planning Division which was under Superintending Engineer, Water Resources Investigation Circle No.1. Thereafter, he was transferred at Ahmedabad. Vide office circular dated 10/9/1984 seniority list of Class-IV employees as on 31/3/1983 was published. In the said seniority list, as averred by the petitioner, his name was placed at serial no. 39. Petitioner has placed on record Annexure-B dated 10/9/1984 indicating the provisional seniority list of Class-IV employees as on 31/3/1983.

The petitioner has placed on record at Annexure-D for the purpose of pointing out that the Water Resources Investigation Circle No.2, Ahmedabad was closed down with effect from 1/6/1986 and, therefore, the employees including the Peons working in the said Circle were transferred to other offices. The petitioner was transferred first to the Central Design Organisation, Gandhinagar and thereafter to the office of the Soil Survey Officer under Water Resources Investigation Circle No.1, Ahmedabad with effect from 1/7/1986. It appears from the Annexure-D that one Mr. A.C. Thakore and the petitioner were posted and were required to be relieved the moment the orders are issued by the Collector in this behalf. Thereafter by order Annexure-D1 dated 31/7/1986 the petitioner and aforesaid Mr. Thakore were transferred in the office of the Flood Control Room. Thereafter the petitioner was appointed as a Peon on the permanent post, upon retirement of the peon in the office of City Deputy Collector. Vide order dated 3/3/1987 Annexure-F the petitioner was transferred to the office of the City Mamlatdar, Ahmedabad on a vacant post. Thereafter on 16/4/1987 by simple letter the petitioner is declared as surplus and is relieved after office hours on 16/4/1987.

3. Though the notice was issued by this Court on 24/4/1987 which was made returnable on 27/4/1987, none of the respondents have bothered to file reply or to appear before the Court.

4. When the Court has issued a notice it is expected

that the respondents who are Government servants are filing appearance before the Court and are pointing out that the facts stated in the petition are not true or the case is required to be rejected. However, having failed in discharging their duties the Court was constrained to issue rule on 7/9/1987. Thereafter, the matter has been adjourned from time to time and till today neither the State Government through the Secretary Irrigation Department nor the Superintending Engineer, Water Resources Investigation Circle No.1 or the Collector, Ahmedabad District or City District Collector, Ahmedabad City have bothered to file any reply in the matter. Therefore, the averments which are made in the petition have remained uncontroverted despite number of opportunities granted. If reply is not filed within particular time in acase like this, the averments are required to be accepted.

In the above view of the matter, the petition is required to be allowed. The order of termination Annexure-G dated 16/4/1987 is quashed and set aside. It is further directed that the respondents shall forthwith take the petitioner on duty. At the same time it is to be noted that as the petitioner has not worked for all these days, the Court thinks it just and proper not to burden the State Exchequer for back wages. However, it is directed that the State Government shall make an inquiry into the matter as to why the services of the petitioner were terminated and secondly as to why the respondents have not bothered to file reply before the Court and shall place report before the Court. It is expected that thhe Chief Secretary shall look into the matter personally and see that the report is submitted before the Court within three months. He may entrust the matter to the Competent Addl. Chief Secretary.

Rule made absolute accordingly with no order as to costs.

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* Pansala.